IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

TRIAL BY JURY

Nicole M. Frye, Administrator of the

Estate of James M. Huber

45 Crestwood Ln. : CIVIL ACTION NO. 22-597

North East, PA, 16428

Plaintiff.

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V.

Anthony Nigro

3331 Trooper Paul Kurdys Way
Buffalo, NY 14225

Defendant.

AFFIDAVIT

Nicole M. Frye, being duly sworn deposes and says:

- 1. I am the Administrator of the Estate of James M. Huber and plaintiff in the above case.
- 2. James M. Huber was a resident of the Erie County, Commonwealth of Pennsylvania. He died on August February 12, 2022 at the age of 38.
- 3. On May 27, 2022, I was granted Letters of Administration with limitations by the Court of Common Pleas of Erie County of the Commonwealth of Pennsylvania. (Exhibit A). To date, these letters have not been revoked and are presently in full force and effect.
- 4. I submit this Affidavit in support of an application to settle the above claim for Excessive Force under 42 U.S.C. 1983, resulting in James M. Huber's pain and suffering and death.
- 5. As more fully set forth in the Affirmation of my attorney Brian J. Zeiger, Esquire, I believe my brother James Huber's untimely death was a result of intentional acts on the part of Defendant Anthony Nigro to use Excessive Force in violation of 42 USC 1983.
- 6. After having been advised by my attorney concerning the extent of recoverable damages and the limit of damages that I could expect to recover in this action, and also recognizing the

uncertainty involved in any contested litigation, I believe that it would be in the best interest to resolve this case based upon Defendant's settlement offer of One Million Six Hundred Seventy Five Thousand Dollars (\$1,675,000.00).

- 7. Resolving this case would avoid a significant commitment of additional time, as well as the expense of seeking to recover a judgment that would not appear to significantly exceed the amount of the current settlement offer, and it will bring closure to this matter for me.
- 8. It is my understanding that attorneys' fees to be charged in this case will be equal to a blended rate of 40% to all adult beneficiaries and 25% to all of the minor beneficiaries of the amount recovered, net of expenses, or \$586,250.00.
- 9. It is further my understanding that the following disbursements have been incurred by my attorney in connection with handling this case are as follows:

| Costs | | | |
|---------|------------------------------|-----------|----------|
| 8/31/22 | Filing Fees | \$ | 402.00 |
| 8/31/22 | Service | | 195.00 |
| 4/18/22 | Estate set up fees and costs | : | 4,418.66 |
| | Total Costs | <u>\$</u> | 5,015.66 |

10. After payment of attorneys' fees and expenses the net settlement due to the estate is \$1,083734.34.

WHEREFORE, it is respectfully requested that this Court grant an Order approving the proposed settlement in all respects, an providing for payment from the settlement proceeds of the expenses incurred by Levin & Zeiger LLP in connection with the prosecution of this action in the amount of \$5,015.66; providing for attorney's fees to Levin & Zeiger LLP in the amount of \$586,250.00; and directing the Estate Administrator to apply to the Court of Common Pleas of Erie County of the Commonwealth of Pennsylvania, for an Order of Distribution of the net proceeds of the

settlement pursuant to Title 20 of Pennsylvania's Decedents, Estates and Fiduciaries Law, together with such other and further relief this Court deems just and proper.

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Nicole Frye

Subscribed and sworn to before me this $\underline{q}^{\tau H}$ day of May 2024.

Notary Public

My commission a space July 11, 2026

Commission a space July 11, 2026

Commission a space July 11, 2026

Member, Pennsylvania Association of Notaries

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA **COUNTY OF ERIE**

SHORT CERTIFICATE

| _ | 4//0054 | LIA OFDTV LIA VAICO | |
|---------|---------|---------------------|--|
| T_{2} | AUBKEA | HAGERTY-HAYNES | |

Register for the Probate of Wills and Granting Letters of Administration in and for ERIE County, do hereby certify that on the 27th day of May, Two Thousand and Twenty -Two,

Letters of ADMINISTRATION

in common form were granted by the Register of said County, on the

estate of HUBER JAMES M (Last, First, Middle)

_____, late of NORTH EAST BORO

a/k/a

HUBER JAMES MATHEW

in said county, deceased, to FRYE NICOLE M

and that same has not since been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said office at ERIE, PENNSYLVANIA, this 1st day of June Two Thousand and Twenty-Two.

File No. 25-22-00924

Date of Death 2/12/2022

S.S. #

081-68-7330